

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

T.B., by and through her natural parent	:	Civil Action
and guardian, Brittany Bryner	:	
	:	3:20-cv-000136
Plaintiff,	:	
	:	
v.	:	
	:	
FERNDAL AREA SCHOOL DISTRICT,	:	
TRAVIS ROBISON,	:	
	:	
Defendants	:	

DEFENDANTS' MOTION TO DISMISS PURSUANT TO F.R.C.P. 12(b)(6)

AND NOW, comes the Defendants, Ferndale Area School District and Travis Robison, by and through their counsel of record, Carl P. Beard, Esquire, and Jennifer L. Dambeck, Esquire, of Beard Legal Group, P.C., and hereby file the following Motion to Dismiss pursuant to F.R.C.P. 12(b)(6) and aver as follows:

I. PROCEDURAL HISTORY

1. T.B., by and through her natural parent and guardian, Brittney Bryner, ("Plaintiff") commenced this action with the filing of a civil Complaint on or about July 20, 2020. (Doc 1).
2. The undersigned counsel executed a Waiver of the Service of Summons on behalf of the Defendants. (Doc 6).
3. In her Complaint, Plaintiff, a former student of the Ferndale Area School District, levies the following two (2) causes of action: Count I – Discrimination based on sex or gender (Title IX of the Education Amendments Act of 1972) as asserted against the School District; and Count II – Violation of Fourteenth Amendment Procedural Due Process as asserted against Principal Travis Robison in his individual capacity.

4. After reviewing Plaintiff's Complaint, Defendants have concluded that a Motion to Dismiss for failure to state a claim upon which relief may be granted is merited.

II. LEGAL ARGUMENT

5. Federal Rule of Civil Procedure 12(b)(6) provides for dismissal, by preliminary motion, of all claims and causes of action for which relief may not be granted as a matter of law. Fed.R.Civ.P. 12(b)(6).

6. In considering a Rule 12(b)(6) Motion to Dismiss, the reviewing Court must accept all well-pleaded facts and allegations, and must draw all reasonable inferences therefrom in favor of the plaintiff. *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 220 (3d Cir.2011), cert. denied, 132 S.Ct. 1861 (2012).

7. Plaintiff's Title IX claim against the Ferndale Area School District must be dismissed pursuant to Rule 12(b)(6) for Plaintiff's failure to state a plausible claim for relief under the Act.

8. As discussed more fully in Defendants' accompanying Brief in Support of this Motion to Dismiss, Plaintiff fails to plead facts to establish that sexual harassment occurred, that the alleged acts of sexual harassment occurred during school hours and/or on school grounds, that the District had actual knowledge of the harassment, that the District was deliberately indifferent to the alleged harassment, or that the harassment was so severe, pervasive, and objectively offensive that it deprived Plaintiff of access to educational opportunities or benefits provided by the District.

9. As such, the Complaint fails to state a Title IX claim for relief that is plausible on its face.

10. As discussed more fully in Defendants' accompanying Brief in Support, Plaintiff fails to state a procedural due process claim against Travis Robison as the complained of actions for alleged harassment and assault are attributable to students, and not to Mr. Robison as a state actor. *Monn v. Gettysburg Area Sch. Dist.*, 553 F. App'x 120 (3d Cir. 2014).

11. Defendants incorporate by reference all of the arguments set forth in the concurrently filed Brief in Support of its Motion to Dismiss.

WHEREFORE, Defendants Ferndale Area School District and Travis Robison respectfully request this Honorable Court grant the within Motion to Dismiss and dismiss the Complaint with prejudice.

Respectfully Submitted,

BEARD LEGAL GROUP, P.C.

/s/ Jennifer L. Dambeck

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CERTIFICATE OF SERVICE

I, Jennifer L. Dambeck, Esquire, of Beard Legal Group, P.C., hereby certify that a true and correct copy of the Defendants' Motion to Dismiss has been served on the following parties of record via U.S. mail, email, and/or U.S. Western District's Electronic Case Filing System on this 18th day of September 2020.

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Respectfully Submitted,

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